

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 42 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

CHANDULAL LAXMANBHAI

Versus

STATE OF GUJARAT

Appearance:

MR KJ KAKKAD for Petitioner

MR KP RAVAL, APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/01/99

ORAL JUDGEMENT

Present petitioner-original accused has preferred this petition on the ground that the statement of the petitioner recorded by the learned Judicial Magistrate First Class on 8-1-1998 does not disclose the ingredients of offence under sec.138 of the Negotiable Instruments Act, 1981, hereinafter referred to as 'the Act',

therefore, petitioner-accused is required to be discharged. An application exh.24 was submitted by the petitioner-accused before the Court below on 27-8-1998 for discharge. After hearing the learned counsel for the respective parties, the Court below decided the same on merits by a reasoned order on 5-12-1998. Against that order, present petitioner-accused is before this Court.

2. I have heard the learned counsel for the petitioner-accused, Mr.K.J.Kakad and learned APP for the State, Mr.K.P.Raval.

3. Firstly, learned counsel for the petitioner has argued that if complaint does not disclose the offence, then accused is entitled to file petition under sec.482 of Cr.P.C. for quashing the said complaint. There cannot be any dispute regarding the above proposition of law which has been advanced by the learned counsel for the petitioner after relying upon the judgment reported in AIR 1992 S.C. page 606 known as Bhajan Lal's case. Secondly, he has relied upon judgments reported in 1996 Criminal Law Journal page 1816 and 1991 Criminal Law Journal page 1771 and tried to convince this Court that while deciding the offence under sec.138 of the said Act, the ingredients of sec.138 are required to be satisfactorily established and proved beyond reasonable doubt. Without that, a person cannot be convicted. At the cost of repetition, I say that there cannot be any dispute regarding the said principle.

4. He has also relied upon a proposition of law that "all the technical formalities as laid down under sec.138 of the Act have to be strictly complied with, failing which the complainant is not entitled for any remedy in criminal courts" (S.B.V. Satyanarayana Rao Vs. A. Venkateshwar Rao, 1(1996) BC 464 (A.P.). One more argument advanced by the learned counsel for the petitioner is that the petitioner-accused is required to remain silent during the course of trial and it is the duty of the prosecution to establish its case beyond reasonable doubt. There cannot be any dispute regarding the above propositions of law also. But for that, opportunity is required to be given to the complainant to prove the case beyond reasonable doubt. At this stage, Court cannot jump and come to the conclusion that no notice has been issued or served as required under sec.138 of the Act and when no opportunity is given to the petitioner to come out from the said section. The above argument does not arise at this stage. Therefore, even for his own argument, opportunity is required to be given to the prosecution to prove its case beyond

reasonable doubt.

5. The petitioner has preferred this petition mainly on the ground that while recording the plea of the present petitioner-original accused by the Court below, the ingredients of offence under sec.138 of the Act were not disclosed and, therefore, the Court should use its discretionary power under sec.482 of Cr.P.C. It is further his ground that, if we accept the plea as it is, the Court will not be in a position to convict the petitioner-accused under the said offence. I do not agree with the above argument advanced by the learned counsel for the petitioner because the plea recorded by the Court below satisfies the requirements of sec.138 of the Act, i.e. it disclosed the ingredients which are required to be disclosed while recording the plea. It is not necessary to insert each and every sub-section and proviso of the sections. What is required to be done at the time of recording the plea is to inform the accused that what charge he is facing and in my opinion, the plea recorded by the Court below satisfies the ingredients of sec.138 of the Act. Therefore, I do not think it fit and proper to use my discretionary power under sec.482 of Cr.P.C.

6. Therefore, I am of the opinion that this Cri. Revision Application is not required to be entertained and it requires to be rejected. Hence, it is rejected. Learned counsel for the petitioner has sought leave for approaching Supreme Court, but as no question of law is involved, leave is rejected.

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